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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960.

No. 461

JOHN J. BECK, ET AL.,

Appellants,

vs.

VERA M. BINKS, DIRECTOR OF THE DEPARTMENT OF REGISTRATION AND EDUCATION OF THE STATE OF ILLINOIS,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS.

JURISDICTIONAL STATEMENT.

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No.

JOHN J. BECK, ET AL.,

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VERA M. BINKS, DIRECTOR OF THE DEPARTMENT OF REGISTRATION AND EDUCATION OF THE STATE OF ILLINOIS,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS.

JURISDICTIONAL STATEMENT.

Appellants are appealing from the judgment entered the 22nd day of January, 1960 by the Supreme Court of Illinois and the order entered the 28th day of March, 1960, denying appellants' timely petition for rehearing, relating to the examination of naprapaths as practitioners of the healing arts under the Illinois Medical Practice Act. Notice of appeal was filed on the 21st day of June, 1960, and the time for docketing in this Court was enlarged for good cause shown under Rule 13, by order entered the 9th day of August, 1960, by the Supreme Court of Illinois, to and including the 5th day of October, 1960. Appellants submit

this Jurisdictional Statement to show that this Honorable Court has jurisdiction of this appeal and that a substantial federal question is presented.

OPINIONS BELOW.

The opinion of the Supreme Court of Illinois is reported in 19 Ill. 2d 72 and 165 N. E. 2d 292, a copy of which, together with the dissenting opinion of two Justices, is attached hereto as Appendix A. The judgment of the Supreme Court of Illinois was entered on January 22, 1960, a copy of which is attached hereto as Appendix B. A timely petition for rehearing was denied by order entered March 28, 1960, a copy of which is attached hereto as Appendix C. The order of the Superior Court of Cook County, Illinois, which the Supreme Court of Illinois reviewed was entered on March 18, 1959. A copy of this order is attached hereto as Appendix D. Appellants' motion to vacate the order of March 18, 1959 on federal and state constitutional grounds was denied by order of the lower court entered April 15, 1959, a copy of which is attached hereto as Appendix E.

JURISDICTION.

This action is a complaint in chancery and for Declaratory Judgment brought by the appellants, listed in Appendix F, seeking a declaration that naprapathy, as a method of treating human ailments without drugs or medicines and without operative surgery, is a proper subject of regulation under the Illinois Medical Practice Act and was brought pursuant to Section 57.1 of Chapter 110 Illinois Revised Statutes, p. 1045; Laws 1955, page 2238, of the Illinois Civil Practice Act, a copy of which is attached as Appendix G.

The date of the judgment sought to be reviewed and the time of its entry is January 22, 1960 (Rec. 12). The date

of the order respecting a rehearing is March 28, 1960 (Rec. 15). The notice of appeal was filed on June 21, 1960 in the Supreme Court of Illinois and is included in the record (Rec. 17). The order of that court enlarging the time in which to docket this appeal for good cause shown to and including October 5, 1960, is included in the record (Rec. 31).

The federal constitutional question was originally and timely presented to the Superior Court of Cook County, Illinois, by motion to vacate judgment, a copy of which is annexed as Appendix H, in compliance with the provisions of the Civil Practice Act of Illinois, Chapter 110, Section 68.3, Ch. 110, Illinois Revised Stat. 1955, Laws of Illinois 1955, page 2238, a copy of which is annexed as Appendix J. A direct appeal was taken from this order as a matter of right to the Supreme Court of Illinois where the validity of a statute or construction of the constitution is involved pursuant to the provisions of the Civil Practice Act of Illinois, Chapter 110, Section 75(1)(a), Ch. 110, Illinois Rev. Stat. 1959, p. 1049, Laws of Illinois, 1959, page 1784, a copy of which is annexed as Appendix K.

On this appeal the appellants assigned as error the unconstitutionality of Section 5 of the Illinois Medical Practice Act as applied to them (Rec. 5, p. 4) a copy of which is annexed as Appendix L. The anti-discrimination section of the Act is annexed hereto as Appendix M and the enabling sections of the Act are annexed hereto as Appendix N.

The Court took jurisdiction and the conflict between the Fourteenth Amendment to the Constitution of the United States and the Act as applied to the appellants was presented and argued. The judgment of the Court, by its necessary operation, upheld the validity of the Act as applied to appellants adversely to their claim of federal right.

The statutory provision believed to sustain jurisdiction of this Honorable Court is Title 28, United States Code, Section 1257(2) and 1257(3).

CASES BELIEVED TO SUSTAIN THE JURISDICTION.

Chicago Burlington & Quincy Railroad Company v. *Chicago*, 166 U. S. 226.

Rogers v. *Alabama*, 192 U. S. 226.

Enterprise Irrigation District v. *Farmers Mutual Canal Company*, 243 U. S. 157.

Prudential Ins. Co. v. *Cheek*, 259 U. S. 530.

Schware v. *Board of Bar Examiners*, 353 U. S. 232.

Konigsbury v. *State Board of California*, 353 U. S. 252.

Nostrand v. *Little*, 362 U. S. 474.

People v. *Love*, 298 Ill. 304; 131 N. E. 809; 16 A. L. R. 703.

People v. *Witte* 315 Ill. 282; 146 N. E. 178; 37 A. L. R. 672.

STATUTES INVOLVED.

Illinois Medical Practice Act.

Illinois Revised Statutes 1959, Volume 2:

Page 532, Chapter 91, Section 5; Laws 1959, page 747.

Page 531, Chapter 91, Sections 1, 2 and 3; Laws 1923, page 436.

Page 533, Chapter 91, Section 9a; Laws 1959, page 749.

Page 539, Chapter 91, Section 20; Laws 1959, page 746.

Illinois Civil Practice Act.

Illinois Revised Statutes 1959, Volume 2:

Page 1045, Chapter 110, Section 57.1; Laws 1955, page 2238.

Page 1047, Chapter 110, Section 68.3; Laws 1955, page 2238.

Page 1049, Chapter 110, Section 75(1)(a); Laws 1959, page 1784.

QUESTIONS PRESENTED.

(a) Does the Illinois Medical Practice Act, as applied to appellants, violate the Fourteenth Amendment to the Constitution of the United States?

(b) Does the refusal of the Director of the Department of Registration and Education of the State of Illinois to give examinations to the appellants as naprapaths violate their constitutional guarantees under the Fourteenth Amendment to the Constitution of the United States?

STATEMENT OF THE CASE.

Appellants brought their complaint in chancery for a declaratory judgment (Rec. 3, pp. 1-6) under the Illinois Declaratory Judgment Act alleging that all thirty-eight of them are graduates of the Chicago College of Naprapathy and have been trained to treat human ailments without drugs or medicines and without operative surgery by the system known as naprapathy and that the defendant, the Director of the Department of Registration and Education, charged with the administration of the Illinois Medical Practice Act, had adopted a policy of not recognizing any school of naprapathy and consistently discriminates against and refuses to examine or license naprapaths. Appellants sought a decree declaring naprapathy a proper subject of regulation; ordering the defendant to constitute a naprapathic examining board; and to examine and license appellants upon showing that they were graduates of a regularly licensed school of naprapathy for more than two years.

A motion to strike the complaint was sustained and leave given to file an amended complaint which was filed and later withdrawn by order of Court with leave to file a second amended complaint (Rec. 3, pp. 8-9).

In the second amended complaint (Rec. 3, 10-13), appellants sought a construction of section 2 of paragraph 5 of Chapter 91 of the Illinois Revised Statutes known as the Illinois Medical Practice Act regulating applicants for examination as drugless healers, attached a copy of the act, alleged that they are trained and are being trained as naprapaths, charging the defendant with failing and refusing to recognize the practice of naprapathy and alleging that the defendant does not give examinations to practitioners of naprapathy, and seeking a declaration that the

examination and licensing of naprapaths is a legitimate subject of regulation under the Illinois Medical Practice Act.

HOW THE FEDERAL QUESTION IS PRESENTED.

A motion to strike the second amended complaint was sustained and the cause was dismissed (Rec. 3, p. 16). Appellants moved to vacate and set aside the dismissal order on the ground that the unjust discrimination of the defendant against naprapaths was in violation of the provision of the Illinois Medical Practice Act against such discrimination and in contravention of both the state and federal constitutions (Rec. 3, p. 17). The motion to vacate was overruled (Rec. 3, p. 17) and an appeal was taken directly to the Supreme Court of Illinois as a matter of right under the Illinois Civil Practice Act where the validity of a statute or a construction of the Constitution is involved.

On this appeal appellants assigned as error the unconstitutionality of Sec. 5 of Chapter 91 of the Illinois Medical Practice Act, as applied to them, under both the federal and state constitutions and that the refusal of the defendant to give examinations to them as naprapaths is a denial of due process and equal protection guaranteed to them under both the state and federal constitutions (Rec. 5, p. 4).

The Illinois Supreme Court, in the face of the federal question, affirmed the lower court (Rec. 12). In its opinion, the Court, while recognizing the federal constitutional objection (Rec. 9) failed and refused to directly pass upon the issue (Rec. 10) but did however, in effect, hold the Medical Practice Act constitutionally applicable to the appellants in the face of the federal question. The Court held that osteopathy and chiropractic, both being systems of drugless healing, are regulated by the Medical Practice Act and that naprapathy may be a variant of those systems, imply-

ing that a naprapath should be recognized only as an osteopath or a chiropractor and not within the system of naprapathy (Rec. 9-10).

The Court held that the second amended complaint did not establish that appellants had a sufficient interest in the subject matter to maintain a declaratory action and that the complaint did not present a justiciable question (Rec. 10).

The dissenting opinion of Mr. Justice Davis pointed up the justiciable nature of the controversy and that the constitutional question was presented to and decided by the trial court and that the appellants should not be denied a right to a hearing on this issue. Mr. Justice Schaefer joined in the dissent (Rec. 10, 11).

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

The Illinois Medical Practice Act was enacted in 1923. The scheme of the act divided the examination and licensing of doctors into two classes: (a) those who were to be examined and licensed to practice medicine in all of its branches and (b) those who were to be examined and licensed as drugless and non-surgical practitioners. No particular systems or methods were specified and the Act contained a prohibition against discrimination against any system or method of treating human ailments or against any school or institution teaching any system or method which may be taught or emphasized therein.

The Medical Practice Act of 1923 supplanted the former Medical Practice Act which was held unconstitutional on the ground of discrimination in *People* v. *Love*, 298 Ill. 304; 131 N. E. 809; 16 ALR 703. The Court held there that an occupation is properly within the meaning of due process of law and also included in the right to liberty and the pursuit of happiness. Shortly after the Medical

Practice Act of 1923 was enacted a naprapath was convicted of practicing naprapathy without a license. On appeal the Illinois Supreme Court upheld the conviction in the face of the objection that the Department of Registration and Education was so prejudiced against naprapathy that an application for examination and license before the Department would have been useless and futile. *People* v. *Witte*, 315 Ill. 282; 146 N. E. 178; 37 ALR 672 (1925). The Court said there that it could not prejudge what the Department would do and that relief would abide the event of refusal to give examinations to and license naprapaths.

Thirty-five years have passed since this decision and no naprapath has since been afforded an opportunity to take an examination or been licensed under the Illinois Medical Practice Act of 1923.

The Medical Practice Act as now amended singles out chiropractors for special treatment on examinations and licenses in the face of the anti-discrimination section of the Act. That such discrimination renders the Medical Practice Act as amended unconstitutional and in contravention of the Federal Constitution was assigned as error by the appellants (Rec. 5, p. 4).

The trial Court dismissed appellants' second amended complaint for a declaratory judgment seeking the recognition of naprapathy by the Department as presenting no justiciable controversy and refused to vacate its judgment when presented with the federal question on a proper and timely motion to vacate (Rec. 3, p. 17). The Illinois Supreme Court, on direct appeal, affirmed the trial Court. This judgment, by its necessary operation, was adverse to the claim of federal right and could not rest upon any independent ground of local law. *Chicago, Burlington & Quincy R. R. Co.* v. *Chicago*, 166 U. S. 226, 231.

The non-federal ground upon which the Illinois Supreme Court based its decision was so certainly unfounded that it properly may be regarded as essentially arbitrary, and a mere device to prevent a review of the decision upon the federal question. *Enterprise Irrigation District* v. *Farmers Mutual Canal Co.*, 243 U. S. 157, 164.

THE REASONS WHY THE QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION WITH BRIEFS ON THE MERITS AND ORAL ARGUMENT FOR THEIR RESOLUTION.

As to the thirty-eight appellants, here involved, the judgment of the Illinois Supreme Court affirming the trial court's dismissal of their complaint effectively deprives them of a federal right and the opportunity for enjoyment of the occupation for which they have been trained *Konigsburg* v. *State Board of California*, 353 U. S. 252; *Schware* v. *Board of Bar Examiners*, 353 U. S. 232, unless this Honorable Court, in taking jurisdiction, affords them relief from the arbitrary and unjust discrimination against them in the administration of the Illinois Medical Practice Act.

The treatment of human ailments without drugs or operative surgery by the system or method known as naprapathy is an art as ancient as it is noble, involving as it does, the health and welfare of thousands of citizens of Illinois.

That naprapathy is a substantial factor in treating human ailments is well evidenced by the fact that in the City of Chicago alone, the classified telephone directory lists, under the classification "Naprapaths" two naprapathic colleges and one hundred naprapaths, neither of which nor none of whom have been accredited nor licensed under the Illinois Medical Practice Act of 1923, a situation

which was brought to the attention of the Illinois Supreme Court in oral argument.

The appellants charged in their original complaint that there are many thousands of persons within the State of Illinois who have been and are being treated by persons using the system or method of treating human ailments without the use of drugs or medicines and without operative surgery known as naprapathy (Rec. 3, p. 3), a fact which appellants are well ready to prove if an opportunity to be heard is afforded to them.

CONCLUSION.

On the foregoing grounds and for the foregoing reasons, it is respectfully submitted that the subject matter herein is of such substantial importance in the public interest as to merit this Court's consideration on the merits and that the decisions cited herein are believed to sustain this Honorable Court's jurisdiction.

Respectfully submitted,

EDWIN S. D. BUTTERFIELD, ESQ.,
111 W. Washington Street,
Chicago 2, Illinois,
Counsel of Record for Appellants.

Chicago, Illinois,

September 27, 1960.

APPENDIX A.

Docket No. 35406—Agenda 31—November, 1959.

John J. Beck et al., Appellants. v. Vera M. Binks, Director of Registration and Education, Appellee.

MR. CHIEF JUSTICE HOUSE delivered the opinion of the court:

This is an appeal by plaintiffs from a judgment order dismissing their second amended complaint for a declaratory judgment against the Director of the Department of Registration and Education of the State of Illinois and holding that the complaint presented no justiciable controversy. Plaintiffs seek a construction that naprapathy be declared a legitimate system of treating human ailments within the purview of subsection 2 of section 5 of the Medical Practice Act (Ill. Rev. Stat. 1957, chap. 91, par. 5), and that examination and licensing of practitioners of that system be declared a legitimate subject of regulation thereunder. They assert that the defendant Director, by refusing to examine and license, has prevented them from practicing in violation of their constitutional rights of due process and equal protection.

The complaint identifies the 38 parties plaintiff only as students who "have been and are being trained to treat human ailments without drugs or medicines and without operative surgery by that system or method of treating human ailments known as naprapathy." It alleges nothing more than that an actual controversy exists and that the defendant as Director refuses to recognize the practice of naprapathy and does not give examinations to practitioners of the system.

At the outset we are confronted with the question of whether the complaint states a cause of action under the provisions of the declaratory judgment section of the Civil Practice Act (Ill. Rev. Stat. 1957, chap. 110, par. 57.1). It provides in part: "That the court may, in cases of actual controversy, make binding declarations of rights, * * * at the instance of anyone interested in the controversy, * * *." That provision does not authorize a court to grant declarations of rights involving mere abstract propositions of law without regard to the interests of the parties. An actual controversy must exist before a declaration of rights may be made (*Exchange Nat. Bank* v. *County of Cook*, 6 Ill. 2d 419; *Spalding* v. *City of Granite City*, 415 Ill. 274). Applying the foregoing to this case, we find that the complaint is deficient in two respects. First, the allegations of schooling and training do not establish that plaintiffs have a sufficient interest in the subject matter to maintain a declaratory action. Second, since there is no attempt to define naprapathy, nor does that system of treatment come within the ambit of judicial notice, it cannot be ascertained whether an actual controversy exists. As was aptly argued by the defendant, for aught that appears, naprapathy may be but a variant of osteopathy or chiropractic, both of which are already regulated by the Medical Practice Act. In our opinion the complaint does not present a justiciable question.

The judgment of the superior court of Cook County is affirmed.

Judgment affirmed.

Mr. JUSTICE DAVIS, dissenting.

It is clear that we have jurisdiction to consider this case on direct appeal. By motion to vacate the judgment, plaintiffs directly raised the question that the amended complaint properly charged a violation of section 2 of article II of the constitution of Illinois. The record before us reflects that a constitutional question was presented to and decided by the trial court. *People* v. *O'Connor*, 414 Ill. 51.

The second amended complaint alleged that the plaintiffs have been and are being trained to treat human ailments without the use of drugs or medicines and without operative surgery by a system known as naprapathy and that the defendant refused to recognize such system and to give examinations to its practitioners. While this complaint was not a model of pleading, these allegations were sufficient to show an interest in the plaintiffs and a controversy between the plaintiffs and defendant who allegedly arbitrarily refused to recognize their system.

The charge of discriminatory refusal to recognize this system for the treating of human ailments, certainly gave rise to an actual justiciable controversy between practitioners of the system and the regulatory officer. *Chicago College of Osteopathy* v. *Puffer*, 5 Ill. 2d 441; *People* v. *Witte*, 315 Ill. 282; *People* v. *Love*, 298 Ill. 304; Ill. Rev. Stat. 1957, chap. 91, par. 12.

Nor do I believe that the amended complaint was fatally deficient in failing to define naprapathy. It was defined in the amended complaint in the language of the Medical Practice Act (Ill. Rev. Stat., 1957, chap. 91 par. 5(2)), as a legitimate system or method of treating human ailments without the use of drugs or medicines and without operative surgery. It is also defined in Webster's New Century Dictionary as "a system of treatment based on the theory that disease symptoms are due to strained or contracted liga-

ments and disorders of the connective tissue and can be cured by massage." While it may be contended that the language of the complaint states a conclusion, I believe it more appropriate to treat such averment as an allegation of ultimate fact, which may be readily controverted by answer.

The purpose of a complaint is to state the nature of a claim in such manner that the attendant issues may be clearly defined. The amended complaint here gave notice of the issue—that plaintiffs are trained practitioners of a legitimate system of treating human ailments, and that they have been unlawfully discriminated against by defendant. Neither the artlessness of their pleading, nor this court's view of the merits of their position should deny them a right to a hearing on this issue.

Mr. Justice Schaefer joins in this dissent.

APPENDIX B.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss.
SUPREME COURT. }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the 11th day of January in the year of our Lord, one thousand nine hundred and sixty, within and for the State of Illinois.

Present:

Byron O. House, Chief Justice,
Justice Joseph E. Daily,
Justice George W. Bristow,
Justice Ray P. Klingbiel,
Justice Walter V. Schaefer,
Justice Harry B. Hershey,
Justice Charles H. Davis.

Grenville Beardsley, Attorney General.

Robert G. Miley, Marshal.

Attest: Mrs. Earle Benjamin Searcy, Clerk.

Be it remembered, that, to-wit: on the 22nd day of January 1960, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

John J. Beck, et al., *Appellants,* vs. Vera M. Binks, Director of the Department of Registration and Education of the State of Illinois, *Appellee.*	Appeal from Superior Court, Cook County, 55 S 6271.

No. 35406

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgment of the Superior Court of Cook County aforesaid, Be Affirmed in All Things and Stand in Full Force and Effect, notwithstanding the said matter and things therein assigned for error.

APPENDIX C.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss.
SUPREME COURT. }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the fourteenth day of March in the year of our Lord, one thousand nine hundred and sixty, within and for the State of Illinois.

Present:

Byron O. House, Chief Justice,
Justice Joseph E. Daily,
Justice George W. Bristow,
Justice Ray I. Klingbiel,
Justice Walter V. Schaefer,
Justice Harry B. Hershey,
Justice Charles H. Davis.

Grenville Beardsley, Attorney General.

Robert G. Miley, Marshal.

Attest: Mrs. Earle Benjamin Searcy, Clerk.

Be it remembered, that, to wit: on the 28th day of March, A. D. 1960, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

John J. Beck, et al., *Appellants,* vs. Vera M. Binks, Director of the Department of Registration and Education of the State of Illinois, *Appellee.*	Appeal from Superior Court, Cook County.

No. 35406

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of, and concerning the premises, both overrule the prayer of the petition and denies a rehearing in this cause.

APPENDIX D.

IN THE SUPERIOR COURT OF COOK COUNTY, ILLINOIS.

John J. Beck, et al.,
Plaintiffs,
vs.
Vera M. Binks, Director of the Department of Registration and Education of the State of Illinois,
Defendant.

No. 55 S 6271.

ORDER.

This matter coming on to be heard upon the motion of the defendant to strike the Complaint herein and dismiss the cause and the Court having heard arguments of counsel and being fully advised in the premises finds that said Complaint presents no justiciable controversy under the Declaratory Judgment Act.

It is therefore ordered that the defendant's motion to strike and dismiss be and the same is hereby sustained and the plaintiffs having elected to abide by their second amended complaint,

It is therefore ordered, adjudged and decreed that the Second Amended Complaint be and the same is hereby dismissed at plaintiffs' costs.

It is further ordered that plaintiffs' appeal bond for costs be and the same is hereby fixed in the sum of $250.00.

ENTER:

NORMAN C. BARRY,
Judge of the Superior Court.

March 18, 1959.

APPENDIX E.

IN THE SUPERIOR COURT OF COOK COUNTY, ILLINOIS.

John J. Beck, et al., *Plaintiffs,* *vs.* Vera M. Binks, Director of the Department of Registration and Education of the State of Illinois, *Defendant.*	No. 55 S 6271.

ORDER.

This matter coming on to be heard upon the motion of the plaintiffs to vacate the judgment order of March 18, 1959 heretofore entered herein dismissing the Second Amended Complaint herein and the Court having heard arguments of counsel and being fully advised in the premises,

IT IS ORDERED that plaintiff's motion to vacate the judgment order of March 18, 1959 heretofore entered herein be and the same is hereby overruled.

ENTER:

NORMAN C. BARRY,
Judge of the Superior Court.

April 15, 1959.

APPENDIX F.

PLAINTIFFS.

John J. Beck
George R. Bishop
Orville J. Clark
Joseph De Young
Carl Duerr
Mildred Dollask
Ruth Dolleski
Paul Egan
Albert Eller
Wilma S. Garner
Michael Gibbelina
Mollie Herber
Jerome J. Hoffman
Joseph Jasica
Edward Karwacki
Ann Kocian
Kathryn Kreiner
Isabel Labine
Emil Laske
George McClendon
Cecil McDonald
Frank Murralo
Mary Murralo
Joseph Padona
Raymond Palmer
Edward P. Pozdol
Ann Skorpen
Rudolph Splavic
Helen Steger
Hubert Sutterlin
Kathryn Tepper
Michael Thomas
Victor J. Werner
Michael Kella
Margaret Maurer
Louis Rose
Donald Straub
Russell Benoit

APPENDIX G.

ILLINOIS CIVIL PRACTICE ACT.

Sec. 57.1 DECLARATORY JUDGMENTS. (1) No action or proceeding in any court of record is open to objection on the ground that a merely declaratory judgment, decree or order is sought thereby. The court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination, at the instance of anyone interested in the controversy, of the construction of any statute, municipal ordinance, or other governmental regulation, or of any deed, will, contract, or other written instrument, and a declaration of the rights of the parties interested. The foregoing enumeration does not exclude other cases of actual controversy. The court shall refuse to enter a declaratory judgment, decree or order, if it appears that the judgment, decree or order, would not terminate the controversy or some part thereof, giving rise to the proceeding.

(2) Subject to rules, declarations of rights, as herein provided for, may be obtained by means of a pleading seeking that relief alone, or as incident to or part of a complaint, counterclaim or other pleading seeking other relief as well, and if a declaration of rights is the only relief asked, the case may be set for early hearing as in the case of a motion.

(3) If further relief based upon a declaration of right becomes necessary or proper after the declaration has been made, application may be made by petition to any

court having jurisdiction for an order directed to any party or parties whose rights have been determined by the declaration to show cause why the further relief should not be granted forthwith, upon reasonable notice prescribed by the court in its order.

(4) If a proceeding under this section involves the determination of issues of fact triable by a jury, they shall be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.

(5) Unless the parties agree by stipulation as to the allowance thereof, costs in proceedings authorized by this section shall be allowed in accordance with rules. In the absence of rules the practice followed in ordinary actions at law or in equity shall be followed if applicable, and if not applicable, the costs may be taxed as to the court seems just. Added by act approved July 19, 1955. L. 1955, p. 2238.

APPENDIX H.

IN THE SUPERIOR COURT OF COOK COUNTY, ILLINOIS.

John J. Beck, et al., *Plaintiffs,* vs. Vera M. Binks, Director of the Department of Registration and Education of the State of Illinois, *Defendant.*	No. 55 S 6271.

MOTION TO VACATE JUDGMENT.

Now come the plaintiffs and move to vacate and set aside the judgment order of March 18, 1959 dismissing the Second Amended Complaint in the above entitled cause and for an order requiring the defendant to answer the Second Amended Complaint herein.

Plaintiffs state as grounds for said motion the following:

The refusal of the defendant, being charged with the examination and licensure of practitioners under the Illinois Medical Practice Act, to recognize the practice of naprapathy and the failure of the defendant to give examinations for the practice of Naprapathy as a system or method of treating human ailments without the use of drugs or medicines and without operative surgery, is invidiously discriminatory and in violation of Section 20 of the Medical Practice Act, and in the contravention of Section 2 of Article II of the Bill of Rights of the Constitution of the State of Illinois and in contravention of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and therefore said order should be vacated and the defendant should be required to answer said Second Amended Complaint.

APPENDIX J.

ILLINOIS CIVIL PRACTICE ACT.

Sec. 68.3. Motions After Decree or Judgment in Non-Jury Cases.

(1) In chancery cases and in cases at law tried without a jury, any party may, within 30 days after the entry of the decree of judgment, file a motion for a rehearing or a retrial, or modification of the decree or judgment or to vacate the decree or judgment or for other relief. Neither the filing of nor the failure to file a motion under this section limits the scope of review.

(2) A motion filed in apt time stays execution, and the time for appeal from the decree or judgment does not begin to run until the court rules upon the motion. Added by act approved July 19, 1955. L. 1955, p. 2238.

APPENDIX K.

ILLINOIS CIVIL PRACTICE ACT.

Section 75. Jurisdiction of Appellate and Supreme Courts. (1) Appeals shall be taken directly to the Supreme Court (a) in all cases in which a franchise or freehold or the validity of a statute or a construction of the constitution is involved.

APPENDIX L.

ILLINOIS MEDICAL PRACTICE ACT as Amended, Senate Bill No. 782, 71st G. A., 1959.

SECTION 1. Section 5 of the Medical Practice Act, approved June 30, 1923, as amended, is amended, and Section 9a is added thereto, the amended and added sections to read as follows:

Sec. 5. Except as provided in Section 9a of this Act, the minimum standards of professional education to be enforced by the department in conducting examinations and issuing licenses shall be as follows:

1. Practice of Medicine. For the practice of medicine in all of its branches:

(a) For an applicant who is a graduate of a medical college before the passage of this Act, that such medical college at the time of his graduation required as a prerequisite to graduation a four years' course of instruction of not less than nine months each, in such medical college, or its equivalent, the time elapsing between the beginning of the first year and the ending of the fourth year having been not less than forty months, and which was reputable and in good standing in the judgment of the department; and prior to taking such examination said applicant must present proof that he has completed a four years' course of instruction in a high school or its equivalent as determined by an examination conducted by the department.

(b) For an applicant who is a graduate of a medical college after the passage of this Act, that such medical college at the time of his graduation required as a pre-

requisite to admission thereto a two years' course of instruction in a college of liberal arts, or its equivalent, or in such medical college, and at least a four years' course of instruction of not less than nine months each, in the treatment of human ailments in such medical college, or its equivalent, the time elapsing between the beginning of the first year and the ending of the fourth year in such medical college having been not less than forty months, except that as to students matriculating or entering upon such medical course during the years 1940, 1941, 1942, 1943, 1944, 1945, 1946 and 1947, the said elapsed time shall be not less than thirty-six months, and, in addition thereto, a course of training of not less than twelve months in a hospital, such college of liberal arts, medical college and hospital having been reputable and in good standing in the judgment of the department;

2. Treating human ailments without drugs or medicines and without operative surgery. For the practice of any system or method of treating human ailments without the use of drugs or medicines and without operative surgery:

(a) For an applicant who was a resident student and who is a graduate before July 1, 1926, of a professional school, college or institution which taught the system or method of treating human ailments, which he specifically designated in his application as the one he would undertake to practice, that such school, college or institution at the time of his graduation required as a prerequisite to graduation a three years' course of instruction of not less than six months each, the time elapsing between the beginning of the first year and the ending of the third year having been not less than twenty-two (22) months, and which was reputable and in good standing in the judgment of the department, and prior to taking said examination said applicant must present proof that he

has completed a four years' course of instruction in high school, or its equivalent, as determined by an examination conducted by the department.

(b) For an applicant who was a resident student and who is a graduate after July 1, 1926, of a professional school, college or institution which taught the system or method of treating human ailments which he specifically designated in his application as the one which he would undertake to practice, that such school, college or institution at the time of his graduation required as a prerequisite to admission thereto a four years' course of instruction in a high school, and as a prerequisite to graduation therefrom a four years' course of instruction in the treatment of human ailments, of not less than eight months each, in such professional school, college or institution, the time elapsing between the beginning of the first year and the ending of the fourth year in such professional school, college or institution having been not less than thirty-six (36) months, except that as to students matriculating or entering upon a course of study of any system or method of treating human ailments without the use of drugs or medicines and without operative surgery during the years 1940, 1941, 1942, 1943, 1944, 1945, 1946 and 1947, the said elapsed time shall be not less than thirty-two months, such high school and such school, college or institution having been reputable and in good standing in the judgment of the department.

Sec. 9a. The requirements of Section 5 of this Act, insofar as they relate to the minimum standards of professional education to be enforced by the department in conducting examinations and issuing licenses to persons who specifically designate in their application that they would undertake to practice chiropractic, shall be waived by the department under the following terms and conditions:

(a) Any applicant who was a graduate of a professional school, college or institution which taught chiropractic as a system or method of treating human ailments and which required as a prerequisite to graduation a three years' course of instruction of not less than six months each, shall be permitted until October 31, 1960 to take the regular examination for the treatment of human ailments without the use of drugs or medicine and without operative surgery given for a chiropractic license, which examination shall include the basic science, diagnostic, and chiropractic therapy subjects as given by the Department of Registration and Education in accordance with the usual regulations pertaining to such examinations, if such person for at least one year immediately prior to July 1, 1959 has been a resident of the State of Illinois. If the applicant fails to obtain a passing average grade in all subjects upon which he is examined prior to October 31, 1960, then before admission to any subsequent examination is given the applicant must demonstrate to the satisfaction of the Department of Registration and Education evidence of registration for, and satisfactory completion of a course of not less than 960 hours in a school of chiropractic which is recognized by the Department of Registration and Education. The additional educational requirement and successful completion of the examination given by the Department of Registration and Education must be completed on or before July 1, 1963. Failure to obtain a passing average grade on or before July 1, 1963 disqualifies an applicant for admission to further examinations until such time as he has satisfied all of the eligibility requirements as specified in Paragraph (b) of Sub-Section 2 of Section 5 of this Act.

(b) Any applicant who was a graduate of a professional school, college or institution which taught chiropractic as a system or method of treating human ailments and which

required a prerequisite to graduation therefrom a four years' course of instruction of not less than eight months each, the time elapsing between the beginning of the first year and the ending of the fourth year having been not less than thirty-six months, which professional school, college or institution was not recognized, before September 1, 1957, by the Department of Registration and Education, shall be permitted until October 31, 1960 to take the regular examination for the treatment of human ailments without the use of drugs or medicine and without operative surgery given for a chiropractic license, which examination shall include the basic science, diagnostic and chiropractic therapy subjects as given by the Department of Registration and Education in accordance with the usual regulations pertaining to such examination, if such person for at least one year, immediately prior to July 1, 1959 has been a resident of the State of Illinois. If the applicant fails to obtain a passing average grade in all subjects upon which he is examined prior to October 31, 1960, then before admission to any subsequent examination is given, the applicant must demonstrate to the satisfaction of the Department of Registration and Education, evidence of registration for and satisfactory completion while in residence, of a course of not less than 240 hours in a school of chiropractic which is recognized by the Department of Registration and Education. This additional educational requirement and successful completion of the examination given by the Department of Registration and Education must be completed on or before July 1, 1963. Failure to obtain a passing average grade on or before July 1, 1963 disqualifies an applicant for admission to further examination until he has presented satisfactory evidence of further study to the Department of Registration and Education.

(c) To be eligible for the benefits of this section a person shall register with the Department of Registration

and Education on or before October 31, 1959 and submit proof that he has been a resident of the State of Illinois for at least one year immediately prior to July 1, 1959 and certify that he desires to avail himself of the provisions of this Act. Such person shall report to the Department of Registration and Education annually thereafter until he passes the examination, or until July 1, 1963, whichever first occurs, that he is pursuing a course of study leading to qualifications to take the axamination given by the Department of Registration and Education for a license as a chiropractor.

Any such applicant shall not be subject to prosecution for failure to have a license under the provisions of the Medical Practice Act during the period covered by this Section, provided that nothing herein shall be deemed to affect any suit pending in any Court on the effective date of this amendatory Act.

APPENDIX M.

ILLINOIS MEDICAL PRACTICE ACT.

Sec. 20. The provisions of this Act shall not be so construed nor shall they be so administered as to discriminate against any system or method of treating human ailments, or against any medical college, or any professional school, college or institution teaching any system or method of treating human ailments, on account of any such system or method which may be taught or emphasized in such medical college, or in such professional school, college or institution.

APPENDIX N.

CHAPTER 91.

ILLINOIS MEDICAL PRACTICE ACT.

AN ACT to revise the law in relation to the practice of the treatment of human ailments for the better protection of the public health and to prescribe penalties for the violation hereof (Approved June 30, 1923. L. 1923, p. 436).

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

1. Title of Act.) Sec. 1. This Act shall be known as the Medical Practice Act.

2. Practice without license prohibited.) Sec. 2. No person shall practice medicine, or any of the branches, or midwifery, or any system or method of treating human ailments without the use of drugs or medicines and without operative surgery, without a valid, existing license so to do.

3. Examination.) Sec. 3. No person, except as otherwise provided in this Act, shall hereafter receive such a license unless he shall pass an examination of his qualifications therefor by and satisfactorily to the Department of Registration and Education, hereinafter referred to as the Department.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1960.

NO. 461

JOHN J. BECK, et al.,

Appellants,

vs.

VERA M. BINKS, Director of the Department of Registration and Education of the State of Illinois,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS.

APPELLEE'S MOTION TO DISMISS THIS APPEAL BECAUSE NO FEDERAL QUESTION IS PRESENTED AND THE QUESTION THAT APPELLANTS SEEK TO PRESENT IS NOT SUBSTANTIAL.

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Printed by Authority of the State of Illinois — 868

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Appellee moves this court to dismiss this appeal because:

(1) The Supreme Court of Illinois did not decide any Federal constitutional question in this case. On the contrary, that court affirmed the decision of the Su-

perior Court of Cook County, Illinois, because the plaintiffs' complaint did not present any "actual controversy" within the meaning of the Illinois Declaratory Judgment Act (Ill. Rev. Stats. 1959, Ch. 110, par 57.1, page 1045).

(2) The questions that appellants seek to present to this court, that is, the question of the constitutionality of the Illinois Medical Practice Act (Ill. Rev. Stats. 1959, Ch. 91, pars 1 to 16x, pp. 531 o 541) is not substantial.

(3) The appellants' rights are exactly the same whether the Illinois Medical Practice Act as construed by appellee, the Director of the Department of Registration and Education of the State of Illinois, is or is not constitutional.

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Attorney General of the
State of Illinois,
Counsel for Appellee.

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Of Counsel.

GROUNDS RELIED ON IN SUPPORT OF THE MOTION.

As appears from the opinion of the Supreme Court of Illinois, 19 Ill. 2d 72, 165 N. E. 2d 292, *Jurisdictional Statement, Appendix A*, the plaintiffs filed a complaint for declaratory judgment alleging that they "have been and are being trained to treat human ailments without drugs or medicines and without operative surgery by that system or method of treating human ailments known as naprapathy." They seek a declaratory judgment "that naprapathy be declared a legitimate system of treating human ailments within the purview of" the Illinois Medical Practice Act (Ill. Rev. Stat. 1959, Ch. 91, par. 5) "and that examination and licensing of practitioners of that system be declared a legitimate subject of regulation thereunder."

The Superior Court of Cook County dismissed the complaint for failure to state a justiciable controversy.

The Supreme Court of Illinois affirmed.

I.

The decision of the Supreme Court of Illinois rests upon the adequate State ground that no justiciable controversy was stated under the Illinois Declaratory Judgment Act.

Declaratory judgments are statutory innovations unknown to the common law or equity. The Supreme Court of Illinois said in its opinion in this case (*Appellants' Appendix A*, p. 14):

> "At the outset we are confronted with the question of whether the complaint states a cause of action under the provisions of the declaratory judgment section of the Civil Practice Act. (Ill. Rev. Stat. 1957, chap. 110,

par. 57.1.) It provides in part: "The court may, in cases of actual controversy, make binding declarations of rights, * * * at the instance of anyone interested in the controversy, * * *." That provision does not authorize a court to grant declarations of rights involving mere abstract propositions of law without regard to the interests of the parties. An actual controversy must exist before a declaration of rights may be made. (*Exchange Nat. Bank v. County of Cook*, 6 Ill. 2d 419; *Spalding* v. *City of Granite City*, 415 Ill. 274.) Applying the foregoing to this case, we find that the complaint is deficient in two respects. First, the allegations of schooling and training do not establish that plaintiffs have a sufficient interest in the subject matter to maintain a declaratory action. Second, since there is no attempt to define naprapathy, nor does that system of treatment come within the ambit of judicial notice, it cannot be ascertained whether an actual controversy exists. As was aptly argued by the defendant, for aught that appears, naprapathy may be but a variant of osteopathy or chiropractic, both of which are already regulated by the Medical Practice Act. In our opinion the complaint does not present a justiciable question.

"The judgment of the superior court of Cook County is affirmed.

Judgmen firmed."

It is thus apparent that the Supreme Court of Illinois did not decide any Federal question. Nor was its refusal to decide such a case a subterfuge to avoid decision.

For this reason alone, the judgment appealed from should be dismissed.

II.

The constitutional question that appellants seek to tender is not substantial.

As the Supreme Court of Illinois observed, the Illinois Medical Practice Act provides for the licensure of "osteo-

paths" and "chiropractors", as well as for the practice of medicine and surgery in all of its branches by doctors of medicine and surgeons.

As the court said (*Appellants' Appendix A*, p. 14):

> "As was aptly argued by the defendant, for aught that appears, naprapathy may be but a variant of osteopathy or chiropractic, both of which are already regulated by the Medical Practice Act. In our opinion the complaint does not present a justiciable question."

Moreover, although the Illinois Supreme Court has thus far adhered to the view that a statute that discriminates against recognized systems for the treating of human ailments, such as chiropractic and osteopathy, but forbidding licensure to others than persons licensed to practice medicine and surgery in all of its branches, appellants cite no decisions of this court and there are none that support this archaic view.

We think it quite obvious that, so far as the Fourteenth Amendment is concerned, Illinois may require anyone who practices medicine, osteopathy, chiropractic or naprapathy, to be licensed to practice medicine and surgery in all of its branches.

III.

Appellants' rights are exactly the same whether the Illinois Medical Practice Act as construed by the Director of Illinois' Department of Registration is or is not constitutional.

Appellee, Illinois' Director of Department of Registration and Education, construes Illinois' Medical Practice Act as excluding "naprapaths" from any kind of licensure. Appellants contend that as thus construed, the Illinois act is unconstitutional.

If Illinois is correct in her construction of the Act, appellants are constitutionally excluded from licensure. If appellants are correct in their contention that the Act as thus construed is unconstitutional, then no one in Illinois, *including appellants*, is entitled to any kind of license for the treatment of human ailments except a license to practice dentistry under Illinois Dental Practice Act.

Since all that appellants pray is a declaratory judgment that they are entitled to a license to treat human ailments, since they are not entitled to this license if the Act as construed by appellee is constitutional and since no one, including appellants, is entitled to a license under the Act if it is unconstitutional, no constitutional question can possibly be considered on this appeal.

Respectfully submitted,

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